

_____)	
IN THE MATTER OF:)	
)	SETTLEMENT AGREEMENT
Central Roig Sugar Mill Superfund Site,)	
Yabucoa, Puerto Rico)	U.S. EPA Region 2
Murcielago Pesticide Warehouse Superfund Site)	CERCLA Docket No. 02-2024-2017
Arecibo, Puerto Rico)	
Vega Baja Superfund Site, Vega Baja, Puerto Rico,)	PROCEEDING UNDER
)	SECTION 122(h)(1) OF CERCLA
Puerto Rico Land Authority,)	42 U.S.C. § 9622(h)(1)
)	
SETTLING PARTY.)	
_____)	

**CERCLA SECTION 122(h)(1) SETTLEMENT AGREEMENT
FOR RECOVERY OF RESPONSE COSTS**

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I. JURISDICTION

1. This Settlement Agreement is entered into pursuant to the authority vested in the Administrator of the U.S. Environmental Protection Agency (“EPA”) by Section 122(h)(1) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (“CERCLA”), 42 U.S.C. § 9622(h)(1), which authority has been delegated to the Regional Administrators of EPA by EPA Delegation No. 14-14-D (Cost Recovery Non-Judicial Agreements and Administrative Orders), and was redelegated to the EPA Region 2 Director of the Superfund and Emergency Management Division (March 27, 2019).

2. This Settlement Agreement is made and entered into by the Puerto Rico Land Authority (“Settling Party”) and EPA. Settling Party consents to and agrees not to contest EPA’s authority to enter into this Settlement Agreement or to implement or enforce its terms.

II. BACKGROUND

3. This Settlement Agreement concerns the Central Roig Sugar Mill Superfund Site located in Yabucoa, Puerto Rico (“Central Roig Site”), the Murcielago Pesticide Warehouse Superfund Site located on State Road 2, Candelaria Ward, Arecibo, Puerto Rico (“Murcielago Site”), and the Vega Baja Superfund Site located in the Brisas del Rosario area of the Rio Abajo Ward, Vega Baja, Puerto Rico (“Vega Baja Site”). These three Superfund sites are hereinafter collectively referred to as, “Sites.” EPA alleges that the Sites each constitute a “facility” as defined by Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

4. In response to the release or threatened release of hazardous substances at or from the Sites, EPA undertook response actions pursuant to Section 104 of CERCLA, 42 U.S.C. § 9604.

5. In performing response actions, EPA has incurred response costs at or in connection with the Sites.

6. At the Central Roig Site, Settling Party conducted a removal action under CERCLA pursuant to an Administrative Order for a Removal Action, Index No. CERCLA-02-2014-2026 (“Central Roig Order”), which was issued unilaterally by EPA on July 3, 2014.

7. EPA incurred costs of \$435,663 to oversee Settling Party’s performance of the removal action under the Central Roig Order.

8. At the Murcielago Site, Settling Party entered into an Administrative Order on Consent, Index No. CERCLA-02-2003-2015 (“Murcielago Order”), which was issued by EPA on September 24, 2003, under which Settling Party completed a removal action under CERCLA at the Murcielago Site.

9. On November 23, 2016, pursuant to the terms of the Murcielago Order, EPA sent a bill for collection to Settling Party for \$95,322.68 that represented the costs that EPA had incurred and paid to oversee Settling Party’s performance of the removal action at the Murcielago Site. Settling Party has not paid the bill. Interest has accrued on the unpaid bill in the amount of \$12,030, for a total amount now owed of \$107,353.

10. At the Vega Baja Site, Settling Party entered into a judicial Consent Decree, Civil Action No. 12-1988 (“Vega Baja CD”), in which it agreed to perform work in accordance with a remedy selected at the Vega Baja Site and to pay \$950,000 plus interest in reimbursement of past response costs that EPA had incurred. The Vega Baja CD was entered by the court on April 25, 2013.

11. Settling Party made several payments of varying amounts to EPA toward fulfilling its payment obligations under the Vega Baja CD, with its last payment received by EPA in June of 2018. However, those payments were in amounts less than required and untimely under the terms of the Vega Baja CD. Settling Party’s payments totalled \$227,903, which leaves an unreimbursed principal amount due under the Vega Baja CD of \$722,097. Interest has accrued on the unreimbursed payment amount in the amount of \$82,737, for a total amount now owed of \$804,834.

12. EPA alleges that Settling Party is a responsible party pursuant to Section 107(a) of CERCLA at each of the Sites.

13. EPA and Settling Party recognize that this Settlement Agreement has been negotiated in good faith and is entered into without the admission or adjudication of any issue of fact or law. The actions undertaken by Settling Party in accordance with this Settlement Agreement do not constitute an admission of any liability by Settling Party. Settling Party does not admit the validity of the facts or allegations contained in this Section, and it retains the right to controvert the validity in any subsequent proceedings other than proceedings to implement or enforce this Settlement Agreement.

III. PARTIES BOUND

14. This Settlement Agreement shall be binding upon EPA and upon Settling Party and its successors and assigns. Any change in ownership, name, or corporate or other legal status of Settling Party, including but not limited to any transfer of assets or real or personal property, shall in no way alter Settling Party’s responsibilities under this Settlement Agreement. Each signatory to this Settlement Agreement certifies that he or she is authorized to enter into the terms and conditions of this Settlement Agreement and to bind the Party represented by him or her under the law.

IV. DEFINITIONS

15. Unless otherwise expressly provided in this Settlement Agreement, terms used in this Settlement Agreement that are defined in CERCLA or in regulations promulgated under CERCLA shall have the meanings assigned to them in CERCLA or in such regulations. Whenever terms listed below are used in this Settlement Agreement or its appendices, the following definitions shall apply:

“CERCLA” shall mean the Comprehensive Environmental Response, Compensation, and Liability Act, as amended, 42 U.S.C. §§ 9601-9675.

“Commonwealth” shall mean the Commonwealth of Puerto Rico.

“Day” or “day” shall mean a calendar day. In computing any period under this Settlement Agreement, where the last day would fall on a Saturday, Sunday, or federal or Commonwealth holiday, the period shall run until the close of business of the next working day.

“Effective Date” shall mean the effective date of this Settlement Agreement as provided by XIII.

“EPA” shall mean the United States Environmental Protection Agency.

“EPA Hazardous Substance Superfund” shall mean the Hazardous Substance Superfund established by the Internal Revenue Code, 26 U.S.C. § 9507.

“Interest” shall mean interest at the rate specified for interest on investments of the EPA Hazardous Substance Superfund established by 26 U.S.C. § 9507, compounded annually on October 1 of each year, in accordance with 42 U.S.C. § 9607(a). The applicable rate of interest shall be the rate in effect at the time the interest accrues. The rate of interest is subject to change on October 1 of each year. Rates are available online at <https://www.epa.gov/superfund/superfund-interest-rates>.

“Paragraph” shall mean a portion of this Settlement Agreement identified by an Arabic numeral or an upper- or lower-case letter.

“Parties” shall mean EPA and Settling Party.

“Past Response Costs” shall mean all costs, including direct and indirect costs, incurred by EPA and by the U.S. Department of Justice in connection with the Sites through the Effective Date.

“RCRA” shall mean the Solid Waste Disposal Act, as amended, 42 U.S.C. §§ 6901-6992 (also known as the Resource Conservation and Recovery Act).

“Section” shall mean a portion of this Settlement Agreement identified by a Roman numeral.

“Settlement Agreement” shall mean this Settlement Agreement for Recovery of Past Response Costs, U.S. EPA Region 2 Docket No. CERCLA 02-2024-2017.

“Settling Party” shall mean Puerto Rico Land Authority.

“Sites” shall mean (i) the Central Roig Sugar Mill Superfund Site located in Yabucoa, Puerto Rico (“Central Roig Site”); (ii) the Murcielago Pesticide Warehouse Superfund Site located on State Road 2, Candelaria Ward, Arecibo, Puerto Rico (“Murcielago Site”); and (iii) the Vega Baja Superfund Site located in the Brisas del Rosario area of the Rio Abajo Ward, Vega Baja, Puerto Rico (“Vega Baja Site”).

“United States” shall mean the United States of America, including its departments, agencies, and instrumentalities.

V. PAYMENT OF RESPONSE COSTS

16. Within 30 days after the Effective Date, Settling Party shall pay EPA the total sum of \$1,347,850 in reimbursement of Past Response Costs, which shall be paid as follows:

- a. For the Central Roig Site, Settling Party shall make payment of \$435,663 at <https://www.pay.gov> in accordance with the following payment instructions: enter “sfo 1.1” in the search field to access EPA’s Miscellaneous Payment Form – Cincinnati Finance Center. Complete the form including the following information: debtors name, address, phone, and email; type of payment (**Superfund**); Site ID or Bill No. (**0204073**); Payment Amount (**\$435,663**); Installments (**no**); Region (**2**); and, “Are you paying for yourself or another party” (**Self Payment**). Please insert the Site Name (**Central Roig Sugar Mill Superfund Site**) and the Docket No: (**CERCLA 02-2024-2017**) in the Comment field.
- b. For the Murcielago Site, Settling Party shall make payment of \$107,353 at <https://www.pay.gov> in accordance with the same payment instructions in a., above, except use Bill No. (**2721726T0002**) and Payment Amount (**\$107,353**). Please insert the Site Name (**Murcielago Pesticide Warehouse Superfund Site**) and the Docket No: (**CERCLA 02-2024-2017**) in the Comment field.
- c. For the Vega Baja Site, Settling Party shall make payment of \$804,834 at <https://www.pay.gov> in accordance with same payment instructions in a., above, except use Site ID (**0202533**) and Payment Amount **\$804,834**. Please insert the Site Name (**Vega Baja Superfund Site**) and the Docket No: (**CERCLA 02-2024-2017**) in the Comment field.

17. Settling Party shall send to EPA, in accordance with Section XI (Notices and Submissions), a notice of each payment including each of these references.

18. **Deposit of Payment.** Of the total amount to be paid by Settling Party pursuant to Paragraph 16, \$543,016 shall be deposited by EPA in the EPA Hazardous Waste Substance Superfund, and \$804,834 shall be deposited by EPA in the Vega Baja Site Special Account, to be retained and used to conduct or finance response actions at or in connection with the Vega Baja Site, or to be transferred by EPA to the EPA Hazardous Substance Superfund.

VI. FAILURE TO COMPLY WITH SETTLEMENT AGREEMENT

19. **Interest on Late Payments.** If Settling Party fails to make any payment required by Paragraph 16 (Payment of Past Response Costs) by the required due date, Interest shall continue to accrue on the unpaid balance through the date of payment.

20. Stipulated Penalty

- a. If any amounts due to EPA under Paragraph 16 are not paid by the required date, Settling Party shall be in violation of this Settlement Agreement and shall pay to EPA, as a stipulated penalty, in addition to the

Interest required by Paragraph 19 (Interest on Late Payments), \$1,000 per violation per day that such payment is late.

- b. Stipulated penalties are due and payable within 30 days after the date of demand for payment of the penalties by EPA. Settling Party shall make all payments at <https://www.pay.gov> using the following instructions: enter “sfo 1.1” in the search field to access EPA’s Miscellaneous Payment Form - Cincinnati Finance Center. Complete the form including the Site Name (**Vega Baja Superfund Site**) and the Docket No: (**CERCLA 02-2024-2017**) in the comment field, and indicate in the comment field that the payment is for stipulated penalties. Settling Party shall send to EPA, in accordance with Section **Error! Reference source not found.** (Notices and Submissions), a notice of this payment including these references.
- c. Penalties shall accrue as provided in this Paragraph regardless of whether EPA has notified Settling Party of the violation or made a demand for payment but need only be paid upon demand. All penalties shall begin to accrue on the day after payment is due and shall continue to accrue through the date of payment. Nothing in this Settlement Agreement shall prevent the simultaneous accrual of separate penalties for separate violations of this Settlement Agreement.

21. In addition to the Interest and stipulated penalty payments required by this Section and any other remedies or sanctions available to EPA by virtue of Settling Party’s failure to comply with the requirements of this Settlement Agreement, if Settling Party fails or refuses to comply with the requirements of this Settlement Agreement, Settling Party may be subject to an enforcement action pursuant to Section 122(h)(3) of CERCLA, 42 U.S.C. § 9622(h)(3). If the United States, on behalf of EPA, brings an action to enforce this Settlement Agreement, Settling Party shall reimburse the United States for all costs of such action, including but not limited to costs of attorney time.

22. Notwithstanding any other provision of this Section, EPA may, in its unreviewable discretion, waive payment of any portion of the stipulated penalties that have accrued pursuant to this Settlement Agreement. Payment of stipulated penalties shall not excuse Settling Party from payment as required by Section V (Payment of Past Response Costs) or from performance of any other requirements of this Settlement Agreement.

VII. COVENANTS BY EPA

23. **Covenants for Settling Party by EPA.** Except as specifically provided in Section VIII (Reservations of Rights by EPA), EPA covenants not to sue or take administrative action against Settling Party pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), to recover Past Response Costs. These covenants shall take effect upon the Effective Date. These covenants are conditioned upon the satisfactory performance by Settling Party of its obligations under this Settlement Agreement. These covenants extend only to Settling Party and do not extend to any other person.

VIII. RESERVATIONS OF RIGHTS BY EPA

24. EPA reserves, and this Settlement Agreement is without prejudice to, all rights against Settling Party with respect to all matters not expressly included within Paragraph 23 (Covenants for Settling Party by EPA). Notwithstanding any other provision of this Settlement Agreement, EPA reserves, and this Settlement Agreement is without prejudice to, all rights against Settling Party with respect to the following:

- a. liability for failure of Settling Party to meet a requirement of this Settlement Agreement;
- b. liability for costs incurred or to be incurred by the United States that are not within the definition of Past Response Costs;
- c. liability for stipulated penalties for any failure to comply with the Vega Baja CD after the Effective Date;
- d. liability for injunctive relief at any of the Sites under Section 106(a) of CERCLA, 42 U.S.C. § 9606(a);
- e. liability under Sections 106(b) and 107(c)(3) of CERCLA, 42 U.S.C. §§ 9606(b) and 9607(c)(3), for any failure to comply, after the Effective Date, with any EPA administrative order regarding any of the Sites;
- f. criminal liability; and
- g. liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments.

25. Nothing in this Settlement Agreement is intended to be nor shall it be construed as a release, covenant not to sue, or compromise of any claim or cause of action, administrative or judicial, civil or criminal, past or future, in law or in equity, that the United States may have against any person, firm, corporation or other entity not a signatory to this Settlement Agreement.

IX. COVENANTS BY SETTLING PARTY

26. **Covenants by Settling Party.** Settling Party covenants not to sue and agrees not to assert any claims or causes of action against the United States, or its contractors or employees, with respect to Past Response Costs and this Settlement Agreement, including but not limited to:

- a. any direct or indirect claim for reimbursement from the EPA Hazardous Substance Superfund based on Sections 106(b)(2), 107, 111, 112, or 113 of CERCLA, 42 U.S.C. §§ 9606(b)(2), 9607, 9611, 9612, or 9613, or any other provision of law;
- b. any claims arising out of the response actions at the Sites for which the Past Response Costs were incurred, including any claim under the United States Constitution, the Constitution of the Commonwealth of Puerto Rico, the Tucker Act, 28 U.S.C. § 1491, the Equal Access to Justice Act, 28 U.S.C. § 2412, or at common law; and

- c. any claim pursuant to Section 107 or 113 of CERCLA, 42 U.S.C. § 9607 or 9613, Section 7002(a) of RCRA, 42 U.S.C. § 6972(a), or Commonwealth law for Past Response Costs.

27. Nothing in this Settlement Agreement shall be deemed to constitute approval or preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. § 300.700(d).

28. **Waivers of Claims by Settling Party**

- a. Settling Party agrees to waive all claims or causes of action and not to assert any claims (including but not limited to claims or causes of action under Sections 107(a) and 113 of CERCLA) that it may have with respect to:

- (1) **De Micromis Waiver.** For all matters relating to the Sites against any person where the person's liability to Settling Party with respect to the Sites is based solely on having arranged for disposal or treatment, or for transport for disposal or treatment, of hazardous substances at the Sites, or having accepted for transport for disposal or treatment of hazardous substances at the Sites if all or part of the disposal, treatment, or transport occurred before April 1, 2001, and the total amount of material containing hazardous substances contributed by such person to the Sites was less than 110 gallons of liquid materials or 200 pounds of solid materials; and
- (2) **De Minimis/Ability to Pay Waiver.** For response costs relating to the Sites against any person that has entered into a final CERCLA Section 122(g) *de minimis* settlement or a final settlement based on limited ability to pay with EPA with respect to the Sites.

- b. **Exceptions to Waivers**

- (1) The waivers under this Paragraph 28 shall not apply with respect to any defense, claim, or cause of action that Settling Party may have against any person otherwise covered by such waivers if such person asserts a claim or cause of action relating to the Sites against such Settling Party.
- (2) The waiver under Paragraph 28.a(1) (De Micromis Waiver) shall not apply to any claim or cause of action against any person otherwise covered by such waiver if EPA determines that (i) the materials containing hazardous substances contributed to the Sites by such person contributed significantly or could contribute significantly, either individually or in the aggregate, to the cost of the response action or natural resource restoration at the Site, or (ii) such person has failed to comply with any information request or administrative subpoena issued pursuant to Section 104(e) or

122(e)(3)(B) of CERCLA, 42 U.S.C. § 9604(e) or 9622(e)(3)(B), or Section 3007 of RCRA, 42 U.S.C. § 6927, or has impeded or is impeding, through action or inaction, the performance of a response action or natural resource restoration with respect to the Sites, or if (iii) such person has been convicted of a criminal violation for the conduct to which the waiver would apply and that conviction has not been vitiated on appeal or otherwise.

X. EFFECT OF SETTLEMENT/CONTRIBUTION

29. Except as provided in Paragraph 28 (Waiver of Claims by Settling Party), nothing in this Settlement Agreement shall be construed to create any rights in, or grant any cause of action to, any person not a Party to this Settlement Agreement. Except as provided in Section IX (Covenants by Settling Party), Settling Party expressly reserves any and all rights (including, but not limited to, pursuant to Section 113 of CERCLA, 42 U.S.C. § 9613), defenses, claims, demands, and causes of action that it may have with respect to any matter, transaction, or occurrence relating in any way to the Sites against any person not a Party hereto. Nothing in this Settlement Agreement diminishes the right of the United States, pursuant to Section 113(f)(2) and (3) of CERCLA, 42 U.S.C. § 9613 (f)(2)-(3), to pursue any such persons to obtain additional response costs or response action and to enter into settlements that give rise to contribution protection pursuant to Section 113(f)(2).

30. The Parties agree that this Settlement Agreement constitutes an administrative settlement pursuant to which each Settling Party has, as of the Effective Date, resolved liability to the United States within the meaning of Sections 113(f)(2) and 122(h)(4) of CERCLA, 42 U.S.C. §§ 9613(f)(2) and 9622(h)(4), and is entitled, as of the Effective Date, to protection from contribution actions or claims as provided by Sections 113(f)(2) and 122(h)(4) of CERCLA, or as may be otherwise provided by law, for the “matters addressed” in this Settlement Agreement. The “matters addressed” in this Settlement Agreement are Past Response Costs.

31. The Parties further agree that this Settlement Agreement constitutes an administrative settlement pursuant to which Settling Party has, as of the Effective Date, resolved liability to the United States within the meaning of Section 113(f)(3)(B) of CERCLA, 42 U.S.C. § 9613(f)(3)(B).

32. Settling Party shall, with respect to any suit or claim brought by it for matters related to this Settlement Agreement, notify EPA in writing no later than 60 days prior to the initiation of such suit or claim. Settling Party also shall, with respect to any suit or claim brought against it for matters related to this Settlement Agreement, notify EPA in writing within 10 days after service of the complaint or claim upon it. In addition, Settling Party shall notify EPA within 10 days after service or receipt of any Motion for Summary Judgment and within 10 days after receipt of any order from a court setting a case for trial, for matters related to this Settlement Agreement.

33. In any subsequent administrative or judicial proceeding initiated by EPA, or by the United States on behalf of EPA, for injunctive relief, recovery of response costs, or other relief relating to the Sites, Settling Party shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, *res judicata*, collateral estoppel, issue preclusion,

claim-splitting, or other defenses based upon any contention that the claims raised in the subsequent proceeding were or should have been brought in the instant case; provided, however, that nothing in this Paragraph affects the enforceability of the Covenants by EPA set forth in Section VII.

34. Effective upon signature of this Settlement Agreement by Settling Party, Settling Party agrees that the time period commencing on the date of its signature and ending on the date EPA receives from Settling Party the payment(s) required by Section V (Payment of Past Response Costs) and, if any, Section VI (Failure to Comply with Settlement Agreement) shall not be included in computing the running of any statute of limitations potentially applicable to any action brought by the United States related to the “matters addressed” as defined in Paragraph 30, and that, in any action brought by the United States related to the “matters addressed,” Settling Party will not assert, and may not maintain, any defense or claim based upon principles of statute of limitations, waiver, laches, estoppel, or other defense based on the passage of time during such period.

XI. NOTICES AND SUBMISSIONS

35. All notices specified in this settlement must be in an electronic writing. Whenever a notice is required to be given by one Party to another under this settlement, it must be sent via email as specified below. All notices under this Section are effective upon receipt. There is a rebuttable presumption that emailed notices are received on the same day that they are sent. Any Party may change the person or email address applicable to it by providing notice of such change to the other Party.

As to EPA: Eric Wilson
Deputy Director for Enforcement and Homeland Security
Superfund and Emergency Management Division
U.S. EPA, Region 2
wilson.eric@epa.gov
Re: Central Roig, Murcielago, and Vega Baja Superfund Sites.

and to: Elizabeth Leilani Davis
Assistant Regional Counsel
Office of Regional Counsel
davis.leilani@epa.gov
Re: Central Roig, Murcielago, and Vega Baja Superfund Sites.

As to Settling Party: Ramón González Beiró
Puerto Rico Land Authority
President of the Governing Board
pirulgonzalez@agricultura.pr.gov
Re: Central Roig, Murcielago, and Vega Baja Superfund Sites.

XII. INTEGRATION

36. This Settlement Agreement constitutes the final, complete, and exclusive agreement and understanding among the Parties with respect to the settlement embodied in this Settlement Agreement. The Parties acknowledge that there are no representations, agreements, or understandings relating to the settlement other than those expressly contained in this Settlement Agreement.

XIII. EFFECTIVE DATE

37. The effective date of this Settlement Agreement shall be the date upon which EPA provides notice pursuant to Paragraph 35 that it has executed this Settlement Agreement.

IT IS SO AGREED:

U.S. ENVIRONMENTAL PROTECTION AGENCY:

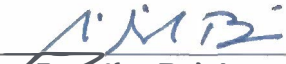
Dated

Pat Evangelista, Director
Superfund and Emergency Management Division

Signature Page for Settlement Agreement, CERCLA Docket No. 02-2024-2017
Central Roig Sugar Mill, Murcielago Pesticide Warehouse, and Vega Baja Superfund Sites

FOR THE PUERTO RICO LAND AUTHORITY:

10-29-24
Dated



Ramon González Beiró
President of the Governing Board
Land Authority of Puerto Rico
1309 Ave. Manuel Fernández Juncos, Pda. 19½
San Juan, P.R. 00908